

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-TGz-13 [v.5] (02/07)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

2/17/2012 8:59:32 AM

Short Title: Mechanics Liens/Payment Bond Reforms.

(Public)

Sponsors: Unknown.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS AMENDMENTS TO NORTH CAROLINA'S
MECHANICS LIEN AND PAYMENT BOND LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 44A-7 reads as rewritten:

"§ 44A-7. Definitions.

Unless the context otherwise ~~requires in this Article~~requires, the following definitions
apply in this Article:

(1) Contractor. – A person who contracts with an owner to improve real
property.

(2) First tier subcontractor. – A person who contracts with a contractor to
improve real property.

~~(1)(3)~~ "Improve" means to Improve. – To build, effect, alter, repair, or demolish
any improvement upon, connected with, or on or beneath the surface of any
real property, or to excavate, clear, grade, fill or landscape any real property,
or to construct driveways and private roadways, or to furnish materials,
including trees and shrubbery, for any of such purposes, or to perform any
labor upon such improvements, and shall also mean and include any design
or other professional or skilled services furnished by architects, engineers,
land surveyors and landscape architects registered under Chapter 83A, 89A
or 89C of the General Statutes, off-site design, fabrication, and related labor
and materials in connection with noncommodity prefabricated materials,
products systems, or equipment customized for the use and benefit of
improving particular real property whether delivered to the real property or
not, and rental of equipment directly utilized on the real property in making
the improvement.

~~(2)(4)~~ "Improvement" means all Improvement. – All or any part of any building,
structure, erection, alteration, demolition, excavation, clearing, grading,
filling, or landscaping, including trees and shrubbery, driveways, and private
roadways, on real property.

(5) Obligor. – An owner, contractor, or subcontractor in any tier who owes
money to another as a result of the other's partial or total performance of a
contract to improve real property.



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~~(3)(6)~~ An "owner" is a Owner. – A person who has an interest in the real property improved and for whom an improvement is made and who ordered the improvement to be made. "Owner" includes successors in interest of the owner and agents of the owner acting within their authority.

~~(4)(7)~~ "Real property" means the Real property. – The real estate that is improved, including lands, leaseholds, tenements and hereditaments, and improvements placed thereon.

(8) Second tier subcontractor. – A person who contracts with a first tier subcontractor to improve real property.

(9) Third tier subcontractor. – A person who contracts with a second tier subcontractor to improve real property."

SECTION 2. G.S. 44A-12 reads as rewritten:

"§ 44A-12. Filing claim of lien on real property.

(a) Place of Filing. – All claims of lien on real property must be filed in the office of the clerk of superior court in each county where the real property subject to the claim of lien on real property is located. The clerk of superior court shall note the claim of lien on real property on the judgment docket and index the same under the name of the record owner of the real property at the time the claim of lien on real property is filed. An additional copy of the claim of lien on real property may also be filed with any receiver, referee in bankruptcy or assignee for benefit of creditors who obtains legal authority over the real property.

(b) Time of Filing. – Claims of lien on real property may be filed at any time after the maturity of the obligation secured thereby but not later than 120 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the lien.

(c) Contents of Claim of Lien on Real Property to Be Filed. – All claims of lien on real property must be filed using a form substantially as follows:

CLAIM OF LIEN ON REAL PROPERTY

- (1) Name and address of the person claiming the claim of lien on real property:
- (2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property at the time the claim of lien on real property is filed:
- (3) Description of the real property upon which the claim of lien on real property is claimed: (Street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.)
- (4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:
- (5) Date upon which labor or materials were first furnished upon said property by the claimant:
- (5a) Date upon which labor or materials were last furnished upon said property by the claimant:
- (6) General description of the labor performed or materials furnished and the amount claimed therefor:

Lien Claimant

Filed this ____ day of ____, ____

Clerk of Superior Court

1 A general description of the labor performed or materials furnished is sufficient. It is not
2 necessary for lien claimant to file an itemized list of materials or a detailed statement of labor
3 performed.

4 (d) No Amendment of Claim of Lien on Real Property. – A claim of lien on real
5 property may not be amended. A claim of lien on real property may be cancelled by a claimant
6 or the claimant's authorized agent or attorney and a new claim of lien on real property
7 substituted therefor within the time herein provided for original filing.

8 (e) Notice of Assignment of Claim of Lien on Real Property. – When a claim of lien on
9 real property has been filed, it may be assigned of record by the lien claimant in a writing filed
10 with the clerk of superior court who shall note the assignment in the margin of the judgment
11 docket containing the claim of lien on real property. Thereafter the assignee becomes the lien
12 claimant of record.

13 (f) Waiver of Right to File, Serve, or Claim ~~Liens as Consideration for Contract~~
14 ~~Against Public Policy. Liens.~~ –

15 (1) An agreement to waive the right to file a claim of lien on real property
16 granted under this Part, or an agreement to waive the right to serve a notice
17 of claim of lien upon funds granted under Part 2 of this Article, which
18 agreement is in anticipation of and in consideration for the awarding of any
19 contract, either expressed or implied, for the making of an improvement
20 upon real property under this Article is against public policy and is
21 unenforceable. This section does not prohibit subordination or release of a
22 lien granted under this Part or Part 2 of this Article.

23 (2) Lien waivers denoted as "partial" lien waivers shall not alter or waive the
24 lien claimant's effective date for any lien claim created by this Article. The
25 sole manner of altering or waiving the effective date is by the lien claimant's
26 executing a document expressly denoted as a "final" lien waiver.

27 (3) Unless expressly stated on the lien waiver form, the lien waiver shall be
28 construed to be conditional upon the lien claimant's actual receipt of the
29 specified funds.

30 (4) Lien waivers shall be substantially in the forms set forth below. Other forms
31 may be used but, any substantive provisions that represent variations to the
32 statutory forms affecting the lien rights created by this Article shall be
33 unenforceable.

34 (g) Partial lien waivers shall be in substantially the following form:

36 PARTIAL LIEN WAIVER

37
38 The undersigned lien claimant, in consideration of the sum of \$ (insert amount of
39 payment) , hereby waives and releases its lien and right to claim a lien for labor, services, or
40 materials furnished through (insert date) to (insert the name of your
41 customer) on the job of (insert the name of the owner) to the following property:

42
43 (insert description of property)
44

45 This waiver and release does not cover any labor, services, or materials furnished after the
46 date specified above nor release claims for retention to become due at a later date nor any other
47 claims expressly identified below:

48
49 Claims not released by this waiver:
50
51

THIS WAIVER IS / IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

(Lien Claimant)

By:- _____

(h) Final lien waivers shall be in substantially the following form:

FINAL LIEN WAIVER

The undersigned lien claimant, in consideration of the final payment in the amount of \$ _____ hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the following described property:

(description of property)

This waiver and release does not cover any labor, services, or materials furnished after the date of this lien waiver. Lien claimant, however, does hereby release any and all claims of lien for labor, materials, or services provided on or before the date of this waiver, including, but not exclusively, any amounts that may be deemed retainage. This lien waiver further waives the effective date of any lien claim created by this Article. The only claims of lien for previously provided labor, services, or materials which are not hereby released are those claims expressly identified below:

Claims not released by this waiver:

THIS WAIVER IS / IS NOT CONDITIONAL UPON LIEN CLAIMANT'S FUTURE RECEIPT OF THE FUNDS STATED ABOVE. (If no choice is indicated, this lien waiver shall be deemed to be conditional upon lien claimant's future receipt of the specified funds.) Unless expressly excepted above, this waiver shall likewise apply to any payment bond issued for the benefit of lien claimant for its labor, materials, or services provided to improve the property.

DATED: _____

(Lien Claimant)

By: _____".

SECTION 3. G.S. 44A-17 is repealed.

SECTION 4. G.S. 44A-18 reads as rewritten:

"§ 44A-18. Grant of lien upon funds; subrogation; perfection.

~~Upon compliance with this Article:~~

(1a) A first tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the contractor with whom the first tier subcontractor dealt and that arise out of the improvement on which the first tier subcontractor worked or furnished materials.

(2b) A second tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the first tier subcontractor with whom the second tier subcontractor dealt and that arise out of the improvement on which the second tier subcontractor worked or furnished materials. A second tier subcontractor, to the extent of the second tier subcontractor's lien provided in this subdivision, shall also be ~~entitled to be~~ subrogated to the lien upon funds of the first tier subcontractor with whom the second tier contractor dealt provided for in subdivision (1) of this section and shall ~~be entitled to~~ perfect it by service of the notice of claim of lien upon funds to the extent of the claim.

(3c) A third tier subcontractor who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the second tier subcontractor with whom the third tier subcontractor dealt and that arise out of the improvement on which the third tier subcontractor worked or furnished materials. A third tier subcontractor, to the extent of the third tier subcontractor's lien upon funds provided in this subdivision, shall also ~~be entitled to be~~ subrogated to the lien upon funds of the second tier subcontractor with whom the third tier contractor dealt and to the lien upon funds of the first tier subcontractor with whom the second tier subcontractor dealt to the extent that the second tier subcontractor is ~~entitled to be~~ subrogated thereto, and in either case shall ~~be entitled to~~ perfect the same by service of the notice of claim of lien upon funds to the extent of the claim.

(4d) Subcontractors more remote than the third tier who furnished labor, materials, or rental equipment at the site of the improvement shall ~~be entitled to have~~ a lien upon funds that are owed to the person with whom they dealt and that arise out of the improvement on which they furnished labor, materials, or rental equipment, but such remote tier subcontractor shall not be entitled to subrogation to the rights of other persons.

(5e) The liens upon funds granted under this section shall secure amounts earned by the lien claimant as a result of having furnished labor, materials, or rental equipment at the site of the improvement under the contract to improve real property, including interest at the legal rate provided in G.S. 24-5, whether or not such amounts are due and whether or not performance or delivery is complete. In the event insufficient funds are retained to satisfy all lien claimants, subcontractor lien claimants may recover the interest due under this subdivision on a pro rata basis, but in no event shall interest due under this subdivision increase the liability of the obligor under G.S. 44A-20.

(6f) A lien upon funds granted under this section arises, attaches, and is perfected effective immediately upon the furnishing of labor, materials, or rental equipment at the site of the improvement by a subcontractor. Any lien upon funds granted under this section is perfected upon the giving of notice of claim of lien upon funds in writing to the obligor as provided in G.S. 44A-19 ~~and shall be effective upon the obligor's receipt of the notice. The subrogation rights of a first, second, or third tier subcontractor to the claim of lien on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23.~~ G.S. 44A-19.

(g) Until either (i) a lien claimant gives notice of a claim of lien upon funds in writing to the obligor as provided in G.S. 44A-19 or (ii) a bankruptcy petition is filed by or against any contractor or subcontractor against whose interest the lien or liens upon funds is claimed, any contractor or subcontractor against whose interest the lien or liens upon funds is claimed may receive, use, or collect payments thereon and may use such proceeds in the ordinary course of its business.

(h) A lien upon funds shall have priority as provided in G.S. 44A-22.

(i) The subrogation rights of a first, second, or third tier subcontractor to the claim of lien on real property of the contractor created by Part 1 of Article 2 of this Chapter are perfected as provided in G.S. 44A-23."

SECTION 5. G.S. 44A-19 reads as rewritten:

"§ 44A-19. Notice of claim of lien upon funds.

(a) Notice of a claim of lien upon funds shall set forth all of the following information:

(1) The name and address of the person claiming the lien upon funds.

(2) A general description of the real property improved.

(3) The name and address of the person with whom the lien claimant contracted to improve real property.

(4) The name and address of each person against or through whom subrogation rights are claimed.

(5) A general description of the contract and the person against whose interest the lien upon funds is claimed.

(6) The amount of the lien upon funds claimed by the lien claimant under the contract.

(b) All notices of claims of liens upon funds by first, second, or third tier subcontractors must be given using a form substantially as follows:

**NOTICE OF CLAIM OF LIEN UPON FUNDS BY FIRST, SECOND, OR THIRD TIER
SUBCONTRACTOR**

To:

1. _____, owner of property involved.

(Name and address)

2. _____, ~~general~~ contractor.

(Name and address)

3. _____, first tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

4. _____, second tier subcontractor against or through
(Name and address) whom subrogation is claimed, if any.

General description of real property ~~where~~ on which labor performed or material furnished:

General description of undersigned lien claimant's contract including the names of the parties thereto:

The amount of lien upon funds claimed pursuant to the above described contract:

\$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights of subrogation to which he is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated _____

_____, Lien Claimant

(Address)

(c) All notices of claims of liens upon funds by subcontractors more remote than the third tier must be given using a form substantially as follows:

NOTICE OF CLAIM OF LIEN UPON FUNDS BY SUBCONTRACTOR MORE REMOTE
THAN THE THIRD TIER

To:

_____, person holding funds against which lien
(Name and Address)

upon funds is claimed.

General description of real property ~~where~~ on which labor performed or material
furnished: _____

General description of undersigned lien claimant's contract including the names of the parties
thereto: _____

The amount of lien upon funds claimed pursuant to the above described contract:

\$ _____

The undersigned lien claimant gives this notice of claim of lien upon funds pursuant to North Carolina law and claims all rights to which he or she is entitled under Part 2 of Article 2 of Chapter 44A of the General Statutes of North Carolina.

Dated: _____

_____, Lien Claimant
(Address)

(d) Notices of claims of lien upon funds under this section shall be served upon the obligor by personal delivery or in any manner authorized by Rule 4 of the North Carolina Rules of Civil Procedure. A copy of the notice of claim of lien upon funds shall be attached to any claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or G.S. 44A-23.~~ G.S. 44A-20(d).

(e) Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real property, except a notice of a claim of lien upon funds may be filed with the clerk of superior court under either of the following circumstances:

(1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to ~~G.S. 44A-20(d) or~~ G.S. 44A-20(d).

(2) When the notice of claim of lien upon funds is filed by the obligor for the purpose of discharging the claim of lien upon funds in accordance with G.S. 44A-20(e).

(f) Filing a notice of claim of lien upon funds pursuant to subsection (e) of this section is not a violation of G.S. 44A-12.1."

SECTION 6. G.S. 44A-20 reads as rewritten:

"§ 44A-20. Duties and liability of obligor.

(a) Upon receipt of the notice of claim of lien upon funds provided for in this Article, the obligor shall be under a duty to retain any funds subject to the lien or liens upon funds under this Article up to the total amount of such liens upon funds as to which notices of claims of lien upon funds have been received.

(b) If, after the receipt of the notice of claim of lien upon funds to the obligor, the obligor makes further payments to a contractor or subcontractor against whose interest the lien or liens upon funds are claimed, the lien upon funds shall continue upon the funds in the hands

1 of the contractor or subcontractor who received the payment, and in addition the obligor shall
2 be personally liable to the person or persons entitled to liens upon funds up to the amount of
3 such wrongful payments, not exceeding the total claims with respect to which the notice of
4 claim of lien upon funds was received prior to payment.

5 (c) If an obligor makes a payment after receipt of notice of claim of lien on funds and
6 incurs personal liability under subsection (b) of this section, the obligor shall be entitled to
7 reimbursement and indemnification from the party receiving such payment.

8 (d) If the obligor is an owner of the property being improved, the lien claimant shall be
9 entitled to a claim of lien upon real property upon the interest of the obligor in the real property
10 to the extent of the owner's personal liability under subsection (b) of this section, which claim
11 of lien on real property shall be enforced only in the manner set forth in G.S. 44A-7 through
12 G.S. 44A-16 and which claim of lien on real property shall be entitled to the same priorities and
13 subject to the same filing requirements and periods of limitation applicable to the contractor.
14 The claim of lien on real property is perfected as of the time set forth in G.S. 44A-10 upon the
15 filing of the claim of lien on real property pursuant to G.S. 44A-12. A lien waiver signed by the
16 contractor prior to filing of the claim of lien on real property waives the subcontractor's right to
17 a claim of lien on real property but does not affect the subcontractor's rights to a claim of lien
18 on funds under this Article. The claim of lien on real property as provided under this subsection
19 shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice
20 of claim of lien upon funds given pursuant to G.S. 44A-19 as an exhibit together with proof of
21 service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the
22 obligor is personally liable for the debt under subsection (b) of this section.

23 (e) A notice of claim of lien upon funds under G.S. 44A-19 may be filed by the obligor
24 with the clerk of superior court in each county where the real property upon which the filed
25 notice of claim of lien upon funds is located for the purpose of discharging the notice of claim
26 of lien upon funds by any of the methods described in G.S. 44A-16.

27 (f) A bond deposited under this section to discharge a filed notice of claim of lien upon
28 funds shall be effective to discharge any claim of lien on real property filed by the same lien
29 claimant pursuant to subsection (d) of this section or G.S. 44A-23 and shall further be effective
30 to discharge any notices of claims of lien upon funds served by lower tier subcontractors or any
31 claims of lien on real property filed by lower tier subcontractors pursuant to subsection (d) of
32 this section or G.S. 44A-23 claiming through or against the contractor or higher tier
33 subcontractors up to the amount of the bond."

34 **SECTION 7.** G.S. 44A-23 reads as rewritten:

35 **"§ 44A-23. Contractor's claim of lien on real property; perfection of subrogation rights of**
36 **subcontractor.**

37 (a) First tier subcontractor. – A first tier subcontractor, who gives notice of claim of lien
38 upon funds as provided in this Article, may, to the extent of ~~this-its~~ claim, enforce the claim of
39 lien on real property of the contractor created by Part 1 of this Article. The manner of such
40 enforcement shall be as provided by G.S. 44A-7 through 44A-16. The claim of lien on real
41 property is perfected as of the time set forth in G.S. 44A-10 upon filing of the claim of lien on
42 real property pursuant to G.S. 44A-12. When completing the claim of lien on real property
43 form, the date upon which labor or materials were last furnished on the real property can be
44 either the date of the last furnishing of labor or materials on the real property by the
45 subcontractor making the claim or the date of last furnishing of labor or materials on the real
46 property by the contractor through which the claim of lien on real property is being asserted.
47 Upon the filing of the claim of lien on real property, with the notice of claim of lien upon funds
48 attached, and the commencement of the action, no action of the contractor shall be effective to
49 prejudice the rights of the subcontractor without his written consent. A lien waiver signed by
50 the contractor prior to commencement of the action waives the subcontractor's right to a claim

of lien on real property but does not affect the subcontractor's rights to a claim of lien on funds under this Article.

(b) Second or third subcontractor. –

(1) A second or third tier subcontractor, who gives notice of claim of lien upon funds as provided in this Article, may, to the extent of his claim, enforce the claim of lien on real property of the contractor created by Part 1 of Article 2 of the Chapter except when:

a. The owner or contractor, within 30 days following the date the ~~building permit~~ is issued for the improvement of the real property ~~involved, involved or~~ within 30 days following the date the contractor is awarded the contract for the improvement of the real property involved, whichever is later, posts on the property in a visible location adjacent to the posted ~~building permit permit, if a permit is required,~~ and files in the office of the clerk of superior court in each county wherein the real property to be improved is located, a completed and signed notice of contract form and the second or third tier subcontractor fails to serve upon the contractor a completed and signed notice of subcontract form by the same means of service as described in G.S. 44A-19(d); or; or

b. After the posting and filing of a signed notice of contract and the service upon the contractor of a signed notice of subcontract, the contractor serves upon the second or third tier subcontractor, within five days following each subsequent payment, by the same means of service as described in G.S. 44A-19(d), the written notice of payment setting forth the date of payment and the period for which payment is made as requested in the notice of subcontract form set forth herein.

(2) The form of the notice of contract to be so utilized under this section shall be substantially as follows and the fee for filing the same with the clerk of superior court shall be the same as charged for filing a claim of lien on real property:

"NOTICE OF CONTRACT

"(1) Name and address of the Contractor:

"(2) Name and address of the owner of the real property at the time this Notice of Contract is recorded:

"(3) General description of the real property to be improved (street address, tax map lot and block number, reference to recorded instrument, or any other description that reasonably identifies the real property):

"(4) Name and address of the person, firm or corporation filing this Notice of Contract:

"Dated: _____

"Contractor

"Filed this the ____ day of _____, ____.

Clerk of Superior Court"

(3) The form of the notice of subcontract to be so utilized under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

"(1) Name and address of the subcontractor:

"(2) General description of the real property ~~where-on which~~ the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

"(3)

"(i) General description of the subcontractor's contract, including the names of the parties thereto:

"(ii) General description of the labor and material performed and furnished thereunder:

"(4) Request is hereby made by the undersigned subcontractor that he be notified in writing by the contractor of, and within five days following, each subsequent payment by the contractor to the first tier subcontractor for labor performed or material furnished at the improved real property within the above descriptions of such in paragraph (2) and subparagraph (3)(ii), respectively, the date payment was made and the period for which payment is made.

"Dated: _____

Subcontractor"

(4) The manner of such enforcement shall be as provided by G.S. 44A-7 through G.S. 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon the filing of a claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real property, with the notice of claim of lien upon funds attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the second or third tier subcontractor without his written consent."

SECTION 8. G.S. 44A-24 reads as rewritten:

"§ 44A-24. False statement a misdemeanor.

If any contractor or other person receiving payment from an obligor for an improvement to real property or from a purchaser for a conveyance of real property with improvements shall knowingly furnish to such obligor, purchaser, or to a lender who obtains a security interest in said real property, or to a title insurance company insuring title to such real property, a false written statement of the sums due or claimed to be due for labor or material furnished at the site of improvements to such real property, then such contractor, subcontractor or other person shall be guilty of a Class 1 ~~misdemeanor~~, ~~misdemeanor~~ and shall be subject to a claim for violation of G.S. 75-1.1 by any obligor, purchaser, lender who obtains a security interest in such property, title insurance company insuring title to such property, or any person who otherwise would be entitled to a claim of lien on real property under this Article and who suffers actual harm as a result of the misrepresentation. In addition, any person who knowingly signs or directs another person to sign such a written statement shall be guilty of a Class 1 misdemeanor and subject to a claim for violation of G.S. 75-1.1. Upon conviction and in the event the court shall grant any defendant a suspended sentence, the court may in its discretion include as a condition of such suspension a provision that the defendant shall reimburse the party who suffered loss on such conditions as the court shall determine are proper.

The elements of the offense herein stated are the furnishing of the false written statement with knowledge that it is false and the subsequent or simultaneous receipt of payment from an obligor or ~~purchaser, and in any purchaser by the person signing the document, a person directing another to sign the document, or any person or entity for whom the document was signed.~~ In any criminal prosecution hereunder it shall not be necessary for the State to prove that the obligor, purchaser, lender or title insurance company relied upon the false statement or that any person was injured thereby."

SECTION 9. G.S. 44A-27 reads as rewritten:

"§ 44A-27. Actions on payment bonds; service of notice.

(a) Subject to the provision of subsection (b) hereof, any claimant who has performed labor or furnished materials in the prosecution of the work required by any contract for which a payment bond has been given pursuant to the provisions of this Article, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last such labor or furnished the last such materials for which he claims payment,

may bring an action on such payment bond in his own name, to recover any amount due him for such labor or materials and may prosecute such action to final judgment and have execution on the judgment.

(b) Any claimant who has a direct contractual relationship with any subcontractor but has no contractual relationship, express or implied, with the contractor may bring an action on the payment bond only if he has given written notice of claim on payment bond to the contractor within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. The contractor shall furnish a copy of the payment bond required by this Article within seven calendar days in response to a written request served by any claimant in accordance with the provisions of G.S. 44A-27(d). Furthermore, unless the contractor has failed to satisfy its obligation to timely furnish a copy of the payment bond to a claimant upon proper request by the claimant, the claim of such a claimant shall be limited to the labor or materials provided within 30 days prior to the claimant's service, in accordance with subsection (c) of this section, of its written notice of subcontract to the contractor setting forth the following information:

(1) The name and address of the person serving the notice of subcontract.

(2) A general description of the real property or project improved sufficient for identification of the real property or project.

(3) The name and address of the person with whom they contracted for the improvement of real property.

(4) The nature of the labor, materials, or work furnished or to be furnished to the real property or project.

(c) ~~The notice~~ notices required by subsection (b), above, shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business or served in any manner provided by law for the service of summons.

(d) The form of the notice of subcontract to be so used under this section shall be substantially as follows:

"NOTICE OF SUBCONTRACT

(1) Name and address of the subcontractor:

(2) General description of the real property on which the labor was performed or the material was furnished (street address, tax map lot and block number, reference to recorded instrument, or any description that reasonably identifies the real property):

(3)

(i) General description of the subcontractor's contract, including the names of the parties thereto:

(ii) General description of the labor and material performed and furnished thereunder:

"Dated: _____

Subcontractor"

SECTION 10. This act becomes effective July 1, 2013, and applies to improvements to real property for which the first permit required to be obtained is obtained on or after that date or, with respect to projects for which no permit is required, applies to improvement to real property commenced on or after that date.